

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AGERE SYSTEMS, INC., CYTEC
INDUSTRIES INC., FORD MOTOR
COMPANY, SPS TECHNOLOGIES, LLC
and TI GROUP AUTOMOTIVE SYSTEMS
L.L.C.,

Plaintiffs,

v.

ADVANCED ENVIRONMENTAL
TECHNOLOGY CORPORATION, et al.,

Defendants.

Civil Action No. 02-CV-3830 (LDD)

**PLAINTIFFS' PRETRIAL
MEMORANDUM**

1. STATEMENT OF CASE AND ISSUES TO BE ADDRESSED

This is an action pursuant to CERCLA and HSCA wherein Plaintiffs seek recovery of Plaintiffs' past costs of response and interest thereon with respect to the Boarhead Farms Superfund Site (the "Site"). Those costs include monies paid to EPA through 2007 to resolve EPA's claims for its alleged past response costs and for EPA's oversight costs, and monies paid by Plaintiffs through 2007 to remediate the Site in accordance with two Consent Decrees. The legal issue presented is whether these monies are recoverable as a matter of law because they were paid and incurred pursuant to those Consent Decrees. Plaintiffs also seek a judgment that Defendants are liable for all future costs paid by Plaintiffs for work done (and EPA oversight costs) after 2007 in accordance with the two Consent Decrees.

This Court will also allocate response costs among Plaintiffs, Defendants, and Settled Defendants primarily based upon the equitable factor of volume of wastes relating to those entities that were disposed of at the Site. Plaintiffs will also ask the Court at trial to increase the allocation to any party that the Court finds knew or should have known that Manfred DeRewal had a history of pollution violations or that he intended to dispose of their waste at the Site. Plaintiffs will also ask the Court at trial to decrease Plaintiffs' share by 50% due to Plaintiffs' cooperation with EPA and the Commonwealth of Pennsylvania by, *inter alia*, settling EPA's past costs claim and conducting the response actions required by the 2000 and 2001 Consent Decrees, and because the Non-Settling Defendants did not do so. The legal issue presented is what equitable factors this Court should determine are appropriate to use in allocating response costs and how those factors should be applied here.

Other legal issues include: whether Plaintiff TI Group Automotive Systems L.L.C. may recover from Defendants monies paid on its behalf by Smiths entities; and how the Court should equitably allocate any orphan shares.

2. WITNESSES

A. Plaintiffs may call the following fact witnesses:

1. Geoffrey Seibel is a Principal of de maximis, inc., 1125 South Cedar Crest Boulevard, Suite 202, Allentown, PA 18103. He will testify concerning the response actions taken by the OU-1 and OU-2 Groups, EPA's approval of those actions, and the costs thereof.

2. Timothy Bergere is a partner with Montgomery, McCracken, Walker & Rhodes, LLC, 123 South Broad Street, Philadelphia, PA 19109. He will testify concerning his management of the escrow accounts for the Boarhead Farms OU-1 and OU-2 Site Groups, the manner in which Group funds have been raised from participating Group members and the agreements relating thereto, the 2007 Agere settlement, the mechanics of assessment issuance, the approval process for the payment of Group costs, and the ministerial aspects of fund receipts and expenditures. As custodian of the escrow accounts and Group records, he will testify concerning the financial records maintained by his law firm in administration and management of Group funds and other Group records.

3. Timothy M. Guerriero is Vice President and General Counsel of TI Group Automotive Systems L.L.C. at 12345 E. Nine Mile Road, Warren, MI 48090. Mr. Guerriero will testify concerning TI Automotive's corporate history, the April 25, 2001 Transfer Agreement, the agreement between TI and Smiths with respect to monies paid by Smiths on TI Automotive's behalf, the payments pursuant thereto, and the Agere settlement.

4. Walter Orme is an officer of several Smiths entities at Valleybrooke Corporate Center, 101 Lindenwood Drive, Suite 125, Malvern, PA 19355. Mr. Orme will testify concerning the corporate histories of the relevant Smiths' entities.

5. Ira Greenberg is an officer of Smiths Group Americas, LLC at Valleybrooke Corporate Center, 101 Lindenwood Drive, Suite 125, Malvern, PA 19355. Mr. Greenberg will testify concerning the corporate histories of the relevant Smiths' entities.

6. John P. Judge is a Partner at Montgomery, McCracken, Walker & Rhoads, LLP, 123 South Broad Street, 24th Floor, Philadelphia, PA 19109 and will testify to negotiation of the settlement embodied in the 2001 Consent Decree, the funding agreements between the OU-1 and OU-2 Groups, and about the 2007 Agere settlement.

7. Bruce DeRewal lives at 2430 Willow Street Dr., Quakertown, PA 18951. He will testify concerning his employment at DCC and the wastes he hauled from DCC customers.

8. Freddie DeRewal was last known to live at 1310 Lonely Cottage Rd., Upper Black Eddy, PA. He will testify concerning his employment at DCC and the wastes he hauled from DCC customers.

9. Manfred T. DeRewal ("Fred DeRewal") was last known to live at 1310 Lonely Cottage Rd., Upper Black Eddy, PA. He will testify concerning the formation of some of his corporations, the purchase, use, and regulatory history of the Site, the leasing of the Ontario Street and Wissinoming facilities, his relationship with AETC, and DCC's customers.

10. Jeffrey Shaak lives at 1036 Old Bethlehem Road, Perkasio, PA. He will testify concerning his employment at DCC and the wastes he hauled from DCC customers.

11. John Barsum lives at 612 Frogtown Road, Ottsville, PA 18942. He will testify concerning his employment at DCC and the wastes he hauled from DCC customers.

12. John Bean lives at 651 North Main Street, Doylestown, PA. He will testify concerning his employment at DCC and the wastes he hauled from DCC customers.

13. June Stephens lives at 41 South 950 West 92, Piercetown, IA 46562. She will testify concerning her employment at DCC and the wastes she hauled from DCC customers.

14. Linda Cochran works at Frenchtown Flowers, 203 Harrison Street, Frenchtown, New Jersey. She will testify as to conversations she observed between Fred DeRewal and Mr. Leuzarder and Mr. Landmesser at the Site and to DCC business documents.

15. Karen Porter lives at 804 Sweetbrier Rd., Perkasio, PA 18944. She will testify concerning her employment at DCC and the wastes she hauled from DCC customers.

16. Elaine M. Gawronski lives at Marienstein Rd, Upper Black Eddy, PA 18972. She will testify concerning her work as a bookkeeper for DCC and to DCC business documents.

17. George Smajda is employed by the New Jersey Department of Environmental Protection at 401 State Street, Trenton, New Jersey. Mr. Smajda will testify concerning the Marvin Jonas business records submitted to, taken by, and maintained at DEP.

18. Craig Coslett is an engineer at de maximis, inc., 1125 South Cedar Crest Boulevard, Suite 202, Allentown, PA 18103. He will testify concerning the excavation of drums during the OU-2 work and sampling done of the contents of certain of those drums. He will also testify concerning the costs of the response actions taken by the OU-1 and OU-2 Groups.

19. Peter Noll is employed by the Bucks County Department of Health at Neshaminy Manor Center, Doyelstown, PA. Mr. Noll will testify to his inspections of the Site and as the custodian of BCDOH records relating to the Site.

20. Richard Cheri lives at 106 Leisure Court, Wyomissing, PA and will testify to Carpenter business records and DCC.

21. William Reger lives at 3051 River Road, Reading, PA 19605 and will testify to Carpenter business records and DCC.

22. James I. Adams lives at 3340 Stoner Avenue, Reading, PA 19606 and will testify to Carpenter's waste acids, DCC, and DeRewal.

23. David E. Mann lives at 347 McCoy Lane, Leesport, PA 19533 and will testify to Carpenter's waste acids, DCC, and DeRewal.

24. Charles Polinko is employed at Carpenter's Reading, PA facility and will testify to Carpenter's chemical analysis of its waste acids.

25. Robert Elbert lives at 2416 Papermill Road, Wyomissing, PA 19610 and will testify to Carpenter's waste acids and removal of those acids by outside haulers.

26. Santo F. Quici lives at 76 Birch Lane, Paoli, PA 19312 and will testify to NRM's wastes and removal of those wastes by outside haulers.

27. Frederick Chesky lives at 289 Sweetbriar Circle, King of Prussia, PA and will testify to NRM's wastes and removal of those wastes by outside haulers.

28. Peter Freda lives at 713 West Rolling Road, Springfield, PA 19064 and will testify to NRM's wastes and removal of those wastes by outside haulers.

29. Merle Winters lives at 12 Foster Lane, Downingtown, PA and will testify to NRM's wastes and removal of those wastes by outside haulers.

30. Fred Piotti lives at 1440 Sugar Town Road, Berwyn, PA and will testify to NRM's wastes and removal of those wastes by outside haulers.

31. Arthur Curly lives at 17 Far View Road, Great Meadows, NJ 07838 and will testify to Ashland's wastes and dealings with DeRewal and AETC.

32. John P. Leuzarder, Jr. lives at Beaver Run Road, Lafayette, NJ 07848 and will testify to AETC's business, DeRewal, Ashland and Diaz.

33. Robert W. Landmesser lives at 400 Ocean Road, Vero Beach, FL 32963 and will testify to AETC's business, DeRewal, Ashland and Diaz.

34. Charles Wilcox, Jr. lives at 252 Route 46, Vienna, NJ and will testify to Ashland's wastes and removal of those wastes by outside haulers.

35. Howard Hendershot lives at 10 Sycamore Lane, Columbia, NJ 07832 and will testify to Ashland's wastes and removal of those wastes by outside haulers.

36. Charles Hendershot lives at 473 Route 94, Columbia, NJ 07832 and will testify to Ashland's wastes and removal of those wastes by outside haulers.

37. Alberto Celleri lives at 10 Baldwin Court, Roseland, NJ and will testify to Ashland's wastes and removal of those wastes by outside haulers.

38. Mary Kollmar lives at 1151 Center Avenue, Pottstown, PA and will testify to Handy's wastes and NRM's wastes and removal of those wastes by outside haulers.

39. Thomas M. Curran lives at 134 Little Road, Perkiomenville, PA 18074 and will testify to Handy's wastes and NRM's wastes and removal of those wastes by outside haulers..

40. James McElya lives at 291 Jeffries Road, Downingtown, PA and has a business at 301 Jeffries Road, Downingtown, PA and will testify to Handy's wastes and NRM's wastes and removal of those wastes by outside haulers.

41. Melvin Bach lives at 242 Hemlock Road, Albrightsville, PA 18210 and will testify to Flexible Circuits, Etched Circuits, and DCC.

42. George B. Stollsteimer lives at 216 Beatrice Avenue, Hatboro, PA and will testify to Flexible Circuits, Etched Circuits, and DCC.

43. Theodore Hahn lives at 2586 Rosenberry Road, Gilbertsville, PA 19525 and will testify to Techalloy wastes and removal of those wastes by outside haulers.

44. John T. Moran, Sr. lives at 365 Maple Avenue, Collegeville, PA 19426 and will testify to Techalloy's connection to the municipal sewer system.

45. Peter M. Senin, Jr. lives at 53 Shelburne Street, Burlington, NJ 08016 and will testify to Techalloy's bookkeeping records.

46. William J. Lehane is a Partner at Drinker Biddle & Reath, One Logan Square, 18th and Cherry Streets, Philadelphia, PA 19103-6996, and will testify concerning his representation of Techalloy in the 1990's.

47. Thomas F. Healey lives at 10733 Albermarle Lane, Philadelphia, PA 19154, and will testify concerning the July 5, 1978 City of Philadelphia Water

Department letter to Manfred DeRewal and the June 17, 1975 Philadelphia Water Department letter to DeRewal.

48. David F. Michelman is a partner at Michelman & Bricker, 2207 Chestnut St., Philadelphia, PA 19103, and will testify concerning the July 5, 1978 City of Philadelphia Water Department letter to Manfred DeRewal.

49. Marianne Santarelli is employed at Agere's, Allentown, PA facility and will testify as a custodian of Agere records.

50. Charles Fraust lives at 405 Bierup Bridge Road, Bethlehem, PA 18017, and will testify concerning the products produced at Western Electric's Allentown, PA facility in the 1970s.

51. Sidney A. Frankel lives at 2 Roger Road, Edison, NJ 08817, and will testify concerning wastes generated at American Cyanamid's Boundbrook, NJ facility.

52. David Stewart lives at 34929 Double Eagle Court, Zephyrhills, FL 33541 and will testify concerning SPS's Jenkintown, PA facility.

53. Terrie Duda Harris lives at 27 Halifax Ct., Marlton, NJ. She will testify with respect to the 1995 deposition of Marvin Jonas in the Buzby Landfill litigation, and the transcripts thereof and exhibits thereto.

54. Dennis R. Shea is employed at SPS's offices at 301 Highland Avenue, Jenkintown, PA 19046. He will testify as a custodian of SPS records, including SPS's 104(e) response.

55. Thomas E. Mesevage is employed at Cytec's offices at Garret Mountain Plaza, West Patterson, NJ. He will testify as a custodian of Cytec's records, including the 104(e) responses of American Cyanamid Company.

56. Brian Bussa is employed at Ford's offices at Parklane Towers West, Suite 950, Three Parklane Boulevard, Dearborn, MI 48126. He will testify as a custodian of Ford's records, including Ford's 104(e) response.

57. Diane Varevice is employed at Ballard Spahr in its offices at Plaza 1000, Suite 500, Main Street, Voorhees, NJ. She will testify as to her procurement of the EPA Carbaryl Fact Sheet.

58. Michael A. Hendershot (or other appropriate document custodian) is employed by EPA at 1650 Arch Street, Philadelphia, PA 19103. He will testify as a document custodian with respect to the General and Special Notice letters issued to Defendants.

59. Sarah P. Keating is employed by EPA at 1650 Arch Street, Philadelphia, PA 19103. She will testify with respect to EPA's issuance of General and Special Notice Letters to Defendants.

60. David A. Christiansen is employed at Carpenter Technology at 147 North Park Road, Wyomissing, PA 19610. He will testify concerning Carpenter's receipt of an EPA Special Notice Letter with respect to the Site, and to his attendance at an October 24, 2000 meeting in which Carpenter was asked to participate in conducting the OU-2 work and in settling EPA's past costs claim.

61. Josephine Lavorni is employed at Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106. She will testify that Rohm and Haas has never made Sevin.

Should one or more of these individuals be unavailable to testify at trial, Plaintiffs intend to offer into evidence portions of the transcripts of the depositions taken in this action of those individuals.

B. Plaintiffs intend to call the following expert witnesses in their case in chief:

1. Jay Vandeven is a Principal of ENVIRON International Corporation, 4350 North Fairfax Drive, Suite 300, Arlington, VA 22203. He will testify with respect to the opinions and bases therefore set forth in his expert reports. His CV is attached.

2. Jurgen H. Exner, Ph.D. is the President and Principal of JHE Technology Systems, Inc., 2 Waverly Ct., Alamo, CA. He will testify with respect to his opinions and the bases therefore concerning the types of wastes generated by the manufacturing facilities of Ashland, Diaz, Carpenter, NRM, and Handy. His CV is attached.

3. Raymond F. Dovell, CPA is a Principal of Nihill & Riedley, P.C., The Public Ledger Building, Suite 800, 150 Independence Mall West, Philadelphia, PA 19106. He will testify with respect to the opinions and bases therefore set forth in his expert report, including that certain individuals and entities do not have identifiable assets which are available and would allow them to participate financially in the cleanup of the Site. His CV is attached.

Should one or more of these individuals be unavailable to testify at trial, Plaintiffs intend to offer into evidence portions of the transcripts of the depositions taken in this action of those individuals.

3. EXHIBITS

See Exhibit List following this Memorandum. Transcripts of the depositions taken in this action and Defendants' Initial Disclosures and Interrogatory Responses have not been listed as exhibits, but may be used at trial as permitted.

4. DAMAGES OR OTHER RELIEF

The payments made by the OU-1 Group for the OU-1 RD/RA through December 31, 2007, for work performed through December 31, 2007, consists of the following amounts:

Agere	\$540,874.34
Cytec	\$846,674.74
Ford	\$841,152.85
SPS	\$841,152.85
TI	\$286,601.22
NRM	\$277,975.20
Worthington	\$277,275.80
	\$3,911,707.00

The payments made by Plaintiffs for the OU-2 RD/RA are in the following amounts:

Agere	\$188,279.75
Cytec	\$530,565.73
Ford	\$521,953.31
SPS	\$521,953.31
TI	\$521,953.31
	\$2,284,705.41

The payments made by the OU-1 Group for EPA's oversight costs for the OU-1 RD/RA are in the following amounts:

EPA Oversight Bill	Agere	Cytec	Ford	SPS	TI	NRM	Worthington
\$38993.30	\$7,798.66	\$7,798.66	\$7,798.66	\$7,798.66	\$2599.55	\$2599.55	\$2599.55
\$169,720.60	\$33,944.12	\$33,944.12	\$33,944.12	\$33,944.12	\$11,314.71	\$11,314.71	\$11,314.71
\$80,466.45	\$16,093.29	\$16,093.29	\$16,093.29	\$16,093.29	\$5,364.43	\$5,364.43	\$5,364.43
\$33,015.66	\$6,603.14	\$6,603.14	\$6,603.14	\$6,603.14	\$2,201.05	\$2,201.05	\$2,201.05
\$10,564.97		\$2,641.24	\$2,641.24	\$2,641.24	\$880.41	\$880.41	\$880.41
\$332,760.98	\$64,439.21	\$67,080.45	\$67,080.45	\$67,080.45	\$22,360.15	\$22,360.15	\$22,360.15

The payments made by Plaintiffs for EPA's oversight costs for the OU-2 RD/RA are in the following amounts:

EPA Oversight Bill	Agere	Cytec	Ford	SPS	TI	NRM	Worthington
\$133,327.41	\$13,332.77	\$29,998.66	\$29,998.66	\$29,998.66	\$29,998.66		
\$120,958.65	\$12,095.87	\$27,215.70	\$27,215.70	\$27,215.70	\$27,215.70		
\$71,695.27		\$18,144.72	\$17,850.18	\$17,850.18	\$17,850.18		
\$325,981.33	\$25,428.64	\$75,359.08	\$75,064.54	\$75,064.54	\$75,064.54		

The payments made by Plaintiffs, NRM, and Worthington for EPA's past costs are in the following amounts:

EPA Past Costs	Agere	Cytec	Ford	SPS	TI	NRM	Worthington
\$7,062,962.06		\$1,765,740.52	\$1,765,740.52	\$1,765,740.52	\$1,765,740.52		
\$415,652.74	\$83,130.55	\$83,130.55	\$83,130.55	\$83,130.55	\$27,710.81	\$27,710.81	\$27,710.81
\$7,478,614.80	\$83,130.55	\$1,848,871.07	\$1,848,871.07	\$1,848,871.07	\$1,793,451.33	\$27,710.81	\$27,710.81

5. FACTS

Stipulations -- The parties have been unable to date to reach stipulations or agree to Undisputed Facts. See Statement of Disputed Facts following this Memorandum.

6. TRIAL TIME - Plaintiffs anticipate 11-15 trial days for their case in chief. They may have several days of additional testimony with respect to Defendants' cases in chief.

7. OTHER DISCLOSURES - Rule 26(a)(3)(B)

Plaintiffs designate the following witness, known to be dead or who lives more than 100 miles from this Court, whose testimony is expected to be presented by means of a deposition:

1. Deposition transcript testimony, including exhibits, of Marvin Jonas taken on 6/20/95, 6/4/95, 6/22/95, 7/18/95 and 7/19/95 in the *Buzby Landfill* litigation. Mr. Jonas is dead.

2. Deposition transcript testimony, including exhibits, of Theodore Jenney in this matter. Mr. Jenney lives more than 100 miles from this Court.

3. Deposition transcript testimony, including exhibits, of Stanley Chiras in this matter. Mr. Chiras lives more than 100 miles from this Court.

4. Deposition transcript testimony, including exhibits, of Diane Shampine in this matter. Ms. Shampine lives more than 100 miles from this Court.



Glenn A. Harris, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
Attorneys for Plaintiffs

(Exhibit List Follows)

(Statement of Disputed Facts Follows)